

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA SOUTHWESTERN RAILROAD,)	
INC., a Corporation,)	
Plaintiff,)	
v.)	2:06-CV-00003-DRB
)	[wo]
AMERICUS C. MITCHELL, JR.,)	
Defendant.)	

ORDER ON MOTIONS

During scheduled oral arguments this day on Defendant's summary judgment motion, counsel concurred with the court's assessment that evidentiary submissions are deficient on the question of fact underlying the court's necessary determination of the proper measure of damages in this property damage claim: *is a railroad trestle bridge an inherently marketable structure which is capable of separate valuation?* For good cause, it is, therefore,

ORDERED as follows:

1. Defendant's *Motion for Summary Judgment* (Doc. 14, Sept. 11, 2006) is DENIED without prejudice.
2. Plaintiff is granted leave to request orally a reconsideration of the court's denial on September 12, 2006 (Doc. 16) of its *Motion for Leave to Amend Complaint* filed September 7 (Doc. 10). Upon due reconsideration, Plaintiff's *Motion* is now GRANTED to the extent that Plaintiff may file by November 1, 2006 an amended complaint which (a) specifies additional claims for "loss of use" damages, only recently ascertained through discovery, and (b) preserves claims for damages based on alternative measures pending a determinative ruling on the proper measure of damages for the railroad trestle bridge.

3. Defendant's *Motion for Leave to Amend Answer* (Doc. 18, Sept. 13, 2006) is GRANTED, and Defendant is DIRECTED to file his AMENDED ANSWER, which shall also respond to the Amended Complaint, not later than November 6, 2006.

4. Defendant's *Motion for Leave of Court to Permit Additional Limited Discovery* (Doc. 28, Oct. 20, 2006) is GRANTED, to the following extent:

a. Both parties may conduct additional limited discovery – until and through November 30, 2006 – on the sole issue of the proper measure of damages for the damaged railroad trestle bridge.

b. Plaintiff is directed (a) to respond in a timely fashion to Defendant's document requests noticed on October 20, and (b) to produce promptly to Defendant (i) a copy of the Purchase and Sale Agreement identified during oral arguments as the most recent documentation for Plaintiff's negotiating proposal to purchase the railroad line now being leased, and (ii) copies of all records which reflect the "purchase price" calculations and considerations described at paragraph 14 (page 29) of the Lease Agreement .

5. The parties are DIRECTED to the AMENDED SCHEDULING ORDER, filed herewith, for modifications in the trial date and related deadlines

DONE THIS 25TH DAY OF OCTOBER, 2006.

/s/ Delores R. Boyd
DELORES R. BOYD
UNITED STATES MAGISTRATE JUDGE